

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

JOHN A. PARDINI,	)	
	)	
Plaintiff,	)	
	)	
v.	)	02: 05cv1381
	)	
BRENTWOOD BOROUGH,	)	
BRENTWOOD POLICE DEPARTMENT,	)	
KENNETH LOCKHART, ROBERT	)	
BUTELLI, DAVID FRANKENFIELD,	)	
GERALD MIKELONIS and BRANDON	)	
SHIELDS,	)	
Defendants.	)	

**MEMORANDUM OPINION AND ORDER OF COURT**

Presently before the Court for disposition is the MOTION TO DISMISS PURSUANT TO RULE 12(b)(6), with brief in support filed by Defendants (*Document Nos. 10 and 11, respectively*), and the RESPONSE filed by Plaintiff (*Document 14*).

On October 3, 2005, Plaintiff, *pro se*, filed a Complaint in which he alleges that Defendants have violated his “due process rights and civil rights” in violation of 42 U.S.C. §§ 1983 and 1985(3). Named as defendants are: Brentwood Borough, Brentwood Police Department, Kenneth Lockhart (the Mayor of Brentwood), Robert Butelli (the Chief of Police of Brentwood Police Department), and Brentwood police officers David Frankenfield, Gerald Mikelonis, and Brandon Shields.

Defendants have filed the instant MOTION TO DISMISS PURSUANT TO RULE 12(b)(6) in which they request the Court to dismiss Plaintiff’s claims against the Police Department, Mayor Kenneth Lockhart, Chief of Police Robert Butelli, all claims under 42

U.S.C. § 1985(3), and all claims for punitive damages against the Brentwood Borough, the Police Department, and the individual Defendants in their official capacities.

As Plaintiff notes in his RESPONSE, Defendants do not seek to dismiss Plaintiff's claims "for violation of his due process and civil rights based on excessive and unnecessary use of force by Defendants Frankenfield, Mikelonis, and Shields" nor do Defendants seek to dismiss Plaintiff's claims "that his rights were violated as a result of the Borough's failure to train its officers, including Defendants Frankenfield, Mikelonis and Shields, and such failure is a custom, policy or practice of the Borough." Response at ¶¶ 4 and 5.

Additionally, Plaintiff responds that he "intends to prosecute his claims against the Borough, Frankenfield, Mikelonis and Shields that are not the subject of the Motion to Dismiss." P's Response (emphasis added).

Therefore, it is hereby **ORDERED, ADJUDGED AND DECREED** as follows:

1. Defendants' Motion to Dismiss all claims against the Brentwood Police Department is **GRANTED**. *See Benckini v. Upper Saucon Twp.*, Civ. A. No. 04-4304, 2005 WL 670688 (E.D. Pa. March 25, 2005) (a municipal police department is not a party subject to suit under § 1983);

2. Defendants' Motion to Dismiss all claims against Defendants Kenneth Lockhart and Robert Butelli, in their individual and official capacities, is **GRANTED** without objection from Plaintiff;

3. Defendants' Motion to Dismiss all claims under 42 U.S.C. § 1985(3) is **GRANTED** without objection from Plaintiff. *See Bray v. Alexandra Womens' Health Clinic*, 506 U.S. 263, 267 (1993) (in order to prove a private conspiracy in violation of Section

1985(3), the Plaintiff must show, inter alia, that “some racial or perhaps otherwise class-based, invidiously discriminatory animus [lay] behind the conspirators’ action.”);

4. Defendants’ Motion to Dismiss all claims for punitive damages against the Borough and the individual Defendants in their official capacities is **GRANTED** without objection from Plaintiff. *See City of Newport v. Fact Concepts*, 453 U.S. 247, 267-71 (1981) (punitive damages are not available against a municipality under Section 1983), and *Gregory v. Chechi*, 853 F.2 111, 120 (3d Cir. 1988) (punitive damages are not available against governmental officials sued in their official capacities); and

5. The caption of this matter shall hereafter read as follows:

JOHN A. PARDINI, Plaintiff  
v.  
BRENTWOOD BOROUGH, DAVID FRANKENFIELD,  
GERALD MIKELONIS and BRANDON SHIELDS, Defendants

Defendants Brentwood Borough, David Frankenfield, Gerald Mikelonis and Brandon Shields are hereby **ORDERED** to file an Answer to Plaintiff’s remaining claims of “excessive and unnecessary use of force” and the “Borough’s failure to train its officers” on or before **June 23, 2006**.

So **ORDERED** this 12th day of June, 2006.

BY THE COURT:

s/Terrence F. McVerry  
United States District Court Judge

cc: John A. Pardini  
2632 Monterey Drive  
Pittsburgh, PA 15241

Suzanne B. Merrick, Esquire  
Thomas, Thomas & Hafer LLP  
Email: [smerrick@tthlaw.com](mailto:smerrick@tthlaw.com)